IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.983 OF 2005
WITH
CIVIL APPLICATION NO.1160 OF 2005

Vijay Mull Sand. ...Appellant.

Vs.

Mr.Timothy Velladeres & Ors. ...Respondents.

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Mr.Nihar Ghag for the Appellant.
Mr.R. D'Souza for Respondent No.3.

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CORAM : DR. D.Y. CHANDRACHUD, J.

December 5, 2005.

P.C.:

A Motion for interim relief in relation to the parking of a car has been dismissed by the Trial Court.

Clause 2(c) of the Deed of Conveyance dated 10th July 2000 contained the following provisions for the parking of the car of the Appellant:

"(c) Parking for one car in the compound of the Western portion of the plot marked in brown colour in plan for

> exclusive use of the Purchaser and or his nominee/s. However, the Purchaser shall not be the Owner of the said land demarcated in brown colour. The Vendors shall be entitled to shift the said parking space to another location in the said Western Portion at the site approved by the Purchaser."

Though parking is to be provided in an area shaded brown in the plan, it is common ground between Counsel that no plan is annexed to the Deed of Conveyance. The Learned Trial Judge has noted that at the present stage a parking facility has been provided to the Appellant in the western portion as required in the Deed of Conveyance though in another part of the property. In view of this factual position, the interference of the Court with an interim arrangement, pending the trial of the suit is not warranted. The ends of justice would be met by expediting the trial of the suit before the City Civil Court.

The Learned Trial Judge noted that the Appellant had parked his car for nearly one year under the staircase which prima facie showed that he was not parking his vehicle in the open space

as contemplated by Clause 2(c) of the Deed of Conveyance. The space under the staircase which was used by the Appellant is not a garage under the approved plan. Moreover, it has been found, prima facie, that the Appellant has stacked rubble and construction material and the photographs show that the material has been dumped in the open car parking spaces one of which is allowed for the use of the Appellant under the Deed of Conveyance. The Trial Court has observed that the Appellant has dumped the construction material only to enable him to assert the claim of the parking place which he claims in the suit. The conduct of the Appellant has, thus, been the subject of an adverse comments in the order of the Learned Trial Judge.

The appeal is accordingly dismissed but the Learned Trial Judge is requested to expedite the trial of the suit and to endeavour to dispose of the suit by 30th April 2006.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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